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Attorneys for Defendant
FRANCISCO MORA ALVAREZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION AND SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO MORA ALVAREZ,

Defendant.

No. CR-08-0143 RMW

**REQUEST FOR RELATED CASE
FINDING**

[Filed March 6, 2008]

(San Jose Venue)

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUILLERMO ALEJANDRO ZARAGOZA, et
al.,

Defendant.

No. CR-08-0083 PJH

[Filed February 19, 2008]

(San Francisco Venue)

1 In response to the related case notice filed by the United States of America on
 2 March 12, 2008, defendant Francisco Mora Alvarez respectfully submits this filing asking the
 3 Court to reconsider its finding that the two above-captioned criminal cases are not related.¹

4 The later-filed charge in United States v. Francisco Mora Alvarez (Crim. No. 08-
 5 0143 RMW) is entirely subsumed, factually and legally, within the earlier filed case, United
 6 States v. Guillermo Alejandro Zaragoza, et al. (Crim. No. 08-0083 PJH). Mr. Alvarez was
 7 arrested during the execution of a search warrant at the home of Martel Valencia, one of the
 8 defendants in the Zaragoza case and a named interceptee of the wiretap in that investigation.
 9 Zaragoza involves a six-count indictment against fourteen defendants. That indictment and the
 10 related investigation directly led to the issuance and execution of eleven search warrants,
 11 including the one that resulted in Mr. Alvarez's arrest and the government's charges against him.
 12 Importantly, while the government claims in its notice that Mr. Alvarez "was found in one of the
 13 bedrooms in possession of . . . methamphetamine," Government's Notice at 2, the government's
 14 criminal complaint alleges that the methamphetamine was seized *from a dresser in the room*, not
 15 from Mr. Alvarez's person. In other words, this is not a case in which Mr. Alvarez fortuitously
 16 happened to be found in personal possession of methamphetamine during the execution of the
 17 warrant. Instead, the government's evidence in Alvarez is necessarily and intrinsically
 18 intertwined with and based on its evidence in the Zaragoza case: the question will be who if
 19 anyone possessed any items seized from Mr. Valencia's home.

20 The government argues in a footnote (without citing any authority) that Mr.
 21 Alvarez's "ability to contest the search of Valencia's home is severely circumscribed," Notice at
 22 2 n.2, based primarily on the fact that Mr. Alvarez was not a named wiretap interceptee. While

23
 24 ¹ Undersigned counsel understands that under Local Rule 8.1(d), a party has five days from
 25 service of a related case notice to file a support or opposition. In this instance, defense counsel
 26 did not receive the government's notice until the evening of March 17, 2008, because the notice
 27 was sent to counsel's former email address at the Department of Justice rather than his current
 28 email address, and was not otherwise served by fax or mail. Counsel apologizes for this
 problem, and has corrected his email address in the Court's ECF system. Promptly upon
 receiving a courtesy copy of the notice (and the Court's order finding the cases not related) on
 the evening of March 17, counsel began to draft this filing.

1 Mr. Alvarez does not accept that assertion, and does not intend to respond fully to the
2 government's would-be standing motion here, it is beside the point for purposes of deciding
3 whether the cases are related. First, it remains to be seen, based on the government's just-
4 beginning production of discovery, what bases Mr. Alvarez might have to challenge the wiretap.
5 Second, if the wiretap application did not establish probable cause or was otherwise improper,
6 then the search warrant based on the wiretap was necessarily deficient as well. In that instance,
7 the warrant will be thrown out, and the evidence against Mr. Alvarez suppressed as the fruits of
8 the poisonous tree. In other words, whether or not Mr. Valencia can challenge the wiretap
9 directly, if the Zaragoza defendants succeed in suppressing the wiretap, the impact will not be
10 limited to the named interceptees, since at that point the derivative search warrants would lack
11 probable cause entirely. If the wiretap falls, the basis for the warrants will fall, and the evidence
12 obtained during the search will not be usable against any of the defendants, including Mr.
13 Valencia. *See, e.g., United States v. Giordano*, 416 U.S. 505, 534 and n.19 (suppressing pen
14 register evidence derived from illegal wiretap); *United States v. Ward*, 808 F.Supp. 803, 809
15 (S.D. Ga. 1992) (suppressing search evidence where search warrants based on invalid wiretap
16 orders). In sum, Mr. Valencia's case is more than related to the Zaragoza case: it is essentially a
17 subset of that case, sharing the same factual underpinnings.

18 For all of these reasons, there is no need to wait and see what motions the
19 defendants might file, as the government suggests, before determining that the cases are related.
20 The two cases are related under both Criminal Local Rule (b)(1) and (b)(2). The underlying
21 facts at issue in Zaragoza will also be at issue in the Alvarez. The *events* and *occurrences* during
22 the execution of the search warrant at Valencia's residence on February 27, 2008 will be at issue
23 in both cases. *See* Criminal L.R. 8-1(b)(1). The ownership, control, and possession of the
24 *property* seized in the Valencia residence will be contested in both cases. *See id.* The
25 *transactions* and *events* alleged to supply probable cause for the search warrant will be
26 challenged by the defendants in both cases, as will the validity and execution of the warrant.

27 Moreover, to the extent that legal issues will be briefed and argued in the Alvarez
28 case, the same arguments will also be made in Zaragoza. Thus, both Judge Hamilton and Judge

1 Whyte will be asked to rule on substantially overlapping factual and legal issues. *See* Criminal
2 L.R. 8-1(b)(2). The potential for duplication of labor if these cases are heard by different judges
3 is thus high. If Alvarez is before a different court than Zaragoza, there will be unnecessary
4 expense and duplicative effort. Moreover, having the cases heard by different judges will create
5 a substantial risk of inconsistent factual or legal rulings based on the same underlying subject
6 matter.

7 For the reasons set forth above, Mr. Alvarez respectfully requests that this matter
8 be found related to the Zaragoza matter pending before Judge Hamilton and reassigned.

9 DATED: March 21, 2008

10 Bingham McCutchen LLP
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13 By: /s/ Haywood S. Gilliam, Jr.
14 Haywood S. Gilliam, Jr.
15 Attorneys for Defendant
16 FRANCISCO MORA ALVAREZ
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